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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,337	10/16/2003	Steven Tchira	DCW-002	7078

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EXAMINER	
HARMON, CHRISTOPHER R	
ART UNIT	**PAPER NUMBER**
3721	

DATE MAILED: 11/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/687,337	TCHIRA, STEVEN	
	Examiner	Art Unit	
	Christopher R. Harmon	3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 August 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6,9-11,18 and 19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) *1-6,9-11,18 and 19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 18 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear how markings on a sheet produce "translucent areas and transparent areas in the sheet of material"; see claim 18, lines 7+.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 3-6, 9-10, and 18 are rejected under 35 U.S.C. 102(a) and (e) as being anticipated by Gilbert (US 6,786,003).

Gilbert discloses a wrap and method comprising: a sheet of material that has intersecting score lines 150, 152, 188, 182, etc. defining a folding sequence (ie. the

sheet is wrapped about itself aligning the various lines; see figures 8-12) corresponding to a pre-determined shape (conical) with a plurality of peaked sections 132 along said lines for the wrap which comprises an overlapping portion capable of being used as a flower sleeve an appearance of being wrapped by hand. Note that gusseted portions as shown in figure 12 provide a multilayered predetermined shape.

Gilbert discloses printing instructions or other text along with graphic designs; see column 4, lines 4+. Thus visual indicia are arranged to illustrate the folding sequence as the alignment of the printed matter would guide a person wrapping the sleeve.

Gilbert discloses the use of glues, pin, tabs, etc. for securing the overlapping portions in a predetermined shape; see column 6, lines 1+.

Gilbert discloses inner translucent wrap surrounded by outer transparent wrap; see column 4, lines 35+.

5. Claims 1-2, 4-6, 11, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Roberts et al. (US 4,917,240).

Roberts et al. disclose a pre-folded flower wrap comprising sheet of material comprising a plurality of scored intersecting lines 114, 140, 147, 182, 106, etc. defining a distinct folding sequence see figure 13; overlapping portions 32; a plurality of peaked sections 18, 50 (see figure 12). The pre-determined folded shape is capable of being used like a flower sleeve to hold a floral arrangement F. The shape is considered having the appearance of being wrapped by hand as the flowers are placed inside an

unfolded/erected shape. Roberts discloses the use of glue and the appearance of a transparent outer wrap; see claim 19.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gilbert (US 6,786,003).

Gilbert does not directly disclose the sheet of material as a single layer, however recognizes a common alternate is a single substrate that is partially transparent; see column 1, lines 22+. It would have been obvious to one of ordinary skill in the art to modify the invention to Gilbert to comprise a single partially transparent layer and thus appear to be a multilayered sleeve when folded.

8. Claims 1- 6, 9-11 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bowman (#6,604,674) in view of Weder (#6,484,442).

Bowman does not disclose the wrapping material to be used for a flower wrap as claimed. However, Weder shows a sheet of material with an unfolded position fig 1 and a second folded position; see figure 3. Weder shows a plurality of lines 28 to fold the sheet in a pre-defined sequence. Weder shows a generally conical shape as claimed

with overlapping portions 48a and peaked sections 86; see figures 7-9. Weder also disclose visual indicia, which include printing instructions (col 3 lines 25+) and fastening means 30 as claimed. The indicia 28 directs the operator to provide fold pleats at predetermined portions (col 5 lines 45+) which reads on the markings being arranged to compliment the folded shape of the sheet.

It would have been obvious to one of ordinary skill in the art at the time of the invention to provide Bowman with a flower wrap as taught by Weder to form a desired product that is known and within the realm of one of ordinary skill in the art. Regarding the step of shipping the wrap Bowman discloses using the packaging material in order to give as a gift thus conveying/shipping the secured pre-folded wrap/packaging.

Regarding claim 6, Bowman shows an open top and bottom predetermined shape when the flaps are not folded as shown in figure 7.

9. Claims 1-5, 9, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weder (#6,484,442) in view of Bowman (#6,604,674).

Weder discloses a method for making a pre-folded flower wrap comprising folding a sheet of material along a plurality of lines 28 with a distinct folding sequence corresponding to a pre-determined folded shape with overlapping portions 48a and a plurality of peaked sections 86; see figures 7-9. The various portions are secured into shape via bonding material 30.

Weder does not directly disclose lines 28 intersecting, however Bowman discloses forming intersecting score lines prior to folding packaging material. It would

have been obvious to one of ordinary skill in the art to form intersecting lines as taught by Bowman in the invention to Weder in order to form a desired shape ie. shorter overlapping portion.

Response to Arguments

10. Applicant's arguments filed 8/25/06 have been fully considered but they are not persuasive. Regarding Gilbert, Gilbert provides gussets in a folded sheet (see above, column 4, lines 17+) ie. providing a predetermined folded shape with multiple layers and a plurality of peaks.

Regarding Roberts, the transparent outer wrap would extend to cover the floral arrangement in the display positions; see figures 14 and 15. Regarding the functional limitations while features of an apparatus may be recited either structurally or functionally, claims directed towards an apparatus must be distinguished from the prior art in terms of structure rather than function. See *In re Schreiber*, 128 F.3d 1473-78, 44 USPQ2d 1429-32 (Fed.Cir. 1997) and *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed.Cir. 1990). Note that the "functionality of a flower sleeve to facilitate placement of the floral arrangement within the multiple layers" without wrapping is not a structural limitation and amounts to the intended use of the product. Limitations directed to an intended use of an apparatus or a process requires a structural difference or a manipulative difference between the claimed invention and the prior art. See *In re Otto*, 312 F.2d 937, 938, 136 USPQ 458, 459 (CCPA 1963); *In re Sinex*, 309 F.2d 488, 492, 135 USPQ 302, 305 (CCPA 1962); *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997).

A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). The determination of whether a preamble limits a claim is made on a case-by-case basis in light of the facts in each case; there is no litmus test defining when a preamble limits the scope of a claim. Catalina Mktg. Int 'l v. Coolsavings.com, Inc., 289 F.3d 801, 808, 62 USPQ2d 1781, 1785 (Fed. Cir. 2002); see MPEP 2111.02. In this case the term "wrap" is not further related to in the body of the claim and rather points to a definition that may be considered outside the ordinary scope of the term ie. the functional limitation "without having to wrap the layers around the floral arrangement" (claim 1, last line). Thus the term wrap is not necessarily confined to the ordinary definition. Furthermore something that "comprises the functionality of a floral sleeve" is not necessarily a "floral sleeve" and thus the claim is not limited to a floral sleeve in the ordinary sense.

Regarding the combination of Weder '442 and Bowman '674, the container/structure is considered a wrap which facilitates placement of a floral arrangement without having to wrap the layers around the floral arrangement. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references

themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both Weder and Bowman disclose inventions for wrapping/packaging materials. The printed instructive indicia of Bowman would be generally available to one of ordinary skill in the art using the invention to Weder.

As discussed in the interview of 5/24/06 the examiner suggests to incorporate specific claim language regarding the structural elements of the instant invention relating the portions/elements of the wrap to one another.

Note that during patent examination, the pending claims must be interpreted as broadly as their terms reasonably allow. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 320,322 (Fed. Cir. 1999). In determining the patentability of claims, the PTO gives claim language its broadest reasonable interpretation" consistent with the specification and claims. *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). See MPEP § 904.1. Limitations such as "comprise an appearance of..."; "comprising a pre-determined shape"; "defining a distinct folding sequence"; etc. should be outlined more specifically in order to differentiate over the prior art of record.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R. Harmon whose telephone number is (571) 272-4461. The examiner can normally be reached on Monday-Friday from 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Chris Harmon
Patent Examiner